

IN THE HIGH COURT OF SINDH AT KARACHI

BEFORE:
Mr. Justice Muhammad Shafi Siddiqui
Mr. Justice Adnan-ul-Karim Memon

(1)

C.P. No. D-6546 of 2016

Bheru Lal

Versus

Pakistan Telecommunication Company Limited & another

A N D

C.P. No. D-6171 of 2016

Muhammad Ayub Khan

Versus

Pakistan Telecommunication Company Limited & another

Date of Hearing: 27.09.2019

Petitioners in both Through Mr. Ravi R. Pinjani Advocate
 petitions:

Respondents in CP No.D- Through Mr. Sufyan Zaman Advocate
 6546 of 2016:

Respondents in CP No.D- Through Mr. Faisal Mahmood Ghani
 6171 of 2016: Advocate

On Court notice Mr. M. Nishat Warsi, DAG.

J U D G M E N T

Muhammad Shafi Siddiqui, J.- Petitioners in these petitions have challenged their removal pursuant to a show-cause notice. Since the facts are common hence the petitions are being disposed by this common judgment.

2. Brief facts are that petitioners herein were appointed as Assistant Divisional Engineer BPS-17 on 19.11.1989 and 03.03.1988 respectively on ad-hoc basis. On establishment of Pakistan Telecommunication Corporation in pursuance of Ordinance No.XVI of 1990, which was subsequently repealed by Pakistan Telecommunication Corporation Act, 1991 (Act XVIII of 1991), the services of petitioners were transferred in

terms of Section 9 of the *ibid* Act on the terms and conditions to which they were entitled immediately before such transfer.

3. The first case on the subject that required interpretation of such transfers came in the case of *Abdul Rahim v. Pakistan Broadcasting Corporation* reported in 1992 SCMR 1213 to the effect that transferred employees qualified to be civil servants within the meaning of Section 2 of Civil Servants Act. The Court rules that the language of Section 9 of the *ibid* Act of 1991 is identical to the language of Section 12 of Pakistan Broadcasting Corporation Act thus they (transferred employees) would continue to enjoy the status of civil servants. The observation came in the case of *Pakistan Telecommunication Corporation v. Riaz Ahmed* reported in PLD 1996 SC 222. This observation was further reiterated by Full Bench of Hon'ble Supreme Court in the case reported in 1999 SCMR 1526 (*Divisional Engineer Phones v Muhammad Shahid*).

4. The service of petitioners underwent another change on account of repeal of Act 1991 *ibid* by section 59 of Pakistan Telecommunication (Reorganization) Act, 1996 whereby PTCL was established. In terms of Section 35(2) an order issued under subsection (1) shall specify employees of Corporation who shall as from the effective date of order be transferred to and becomes employees of entity referred to in the order, provided that such order shall not vary the terms and conditions of the employees to their disadvantage.

5. Etisalat Company holding the administration of PTCL by fiction as remaining shares as being the majority shares were not privatized and vested with the Federal Government of Pakistan. The authority under the Act of 1996 precisely under section 10(3) was competent to make regulations for appointment, promotion, termination and other conditions of employment of its employees and Chapter 7 of these regulations dealt with disciplinary matters of their employees.

6. With this background petitioners were served with the charge sheet dated 02.06.2009 however it did not specify as to under what authority and provisions of rules and regulations, statutory or non-statutory, the charge sheets were issued. Petitioners filed reply and vehemently denied the charges. The inquiry report was prepared and claimed to have been served upon petitioners pursuant to which show-cause notices claimed to have been signed by General Manager HRA. The petitioners replied show-cause notices followed by personal hearing on 29.03.2010. Consequently petitioners were removed from service on 19.05.2010. Petitioners filed departmental appeals but all in vain, as these were rejected.

7. It is the case of the petitioners that on the strength of ratio in the case of Pakistan Telecommunication Employees Trust & others v. Muhammad Arif & others reported in 2015 SCMR 1472 the provisions of Section 3 to 22 of the Civil Servants Act, 1973 and rules framed thereunder are applicable to the transferred employees including disciplinary actions, as provided under Section 16 of the Civil Servants Act, 1973.

8. This being a precise question of law involved in these two petitions we have heard the learned counsel and perused the material available on record.

9. These petitions were originally filed as suits and thus include claim of damages however the petitioners have not addressed any arguments insofar as the claim of damages is concerned. Perhaps rightly so as such questions cannot be adjudicated in proceedings under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 which are required to be established independently through evidence. Thus we only deal with the issue of removal of petitioners as has been explained in the above terms.

10. Admittedly, the provisions of Civil Servants Act, 1973 and rules framed thereunder were not applied to these transferred employees of Telephone & Telegraph Department (T & T Department). The authoritative judgment as relied upon by petitioners' counsel is of Pakistan Telecommunication Employees Trust versus Muhammad Arif & others (Supra). Though the subject matter primarily dealt with issues of pensionary benefits, as fixed by the Federal Government, however it also embarked upon the applicability of Section 3 to 22 of Civil Servants Act, 1973 as protected by Section 9(2) of Act of 1991 and Section 32(2), 36(A) & (B) of Act 1996. The terms and conditions were held to be statutory.

11. In paragraph 19 of the aforesaid judgment the Hon'ble Supreme Court, while categorizing the two categories of employees i.e. one of the company itself and the other the employees of T & T Department having been transferred to the Corporation and then to the Company, observed that their terms and conditions stand protected by the provisions of Section 9 of the Act 1991 and Section 35, 36 and 46 of Act 1996 and thus will be entitled to payment of increase and pension as is announced by the Federal Government. Primarily and substantially the provisions of Civil Servants Act, 1973, as protected by the two legislations, referred above, also protects the service rules and regulations as framed thereunder.

12. Though the subject matter dealt with pension issues but somehow identical with the instant matters regarding applicability of the Act, the Division Bench of this Court in an unreported judgment passed in the case of Syed Ali Ammaar Jafrey v. Federation of Pakistan & others, copy whereof is placed on record, ruled as under:-

"11. ...Not only that the legislature also bound the Federal Government to guarantee the existing terms and conditions of service and rights 9 including pensionary

benefits of the transferred employees. Since they by virtue of the aforesaid provisions became employees of the Corporation in the first instance and then the Company, they did not remain Civil Servants any more. But the terms and conditions of their service provided by sections 3 to 22 of the Civil Servants Act and protected by section 9(2) of the Act of 1991 and sections 35(2), 36(a) and (b) of the Act of 1996 are essentially statutory.”

13. Thus, terms and conditions of their service protected by Section 3 to 22 of Civil Servants Act and protected by Section 9(2) of Act 1991 and Section 35, 36 of the Act 1996 are essentially statutory.

14. In paragraph 14 of the aforesaid judgment, learned Division Bench further clarified the situation as under:-

“14. In view of the forgoing, apparently all the provisions provided in sections 3 to 22 of the Civil Servants” Act, 1973 and rules framed thereunder are applicable to the transferred employees including disciplinary matters as provided in section 16 of the Civil Servants” Act, 1973. In our view prima-facie no prejudice will be caused to the Respondent-Company if they take appropriate measures to deal with the service matters of the petitioners preferably under the aforesaid Rules rather than under the PMS policy as they have served the Respondent-Company for considerable time and now at the verge of retirement, even some of them have retired. In our view, the Honorable Supreme court in the case of Pakistan Telecommunication Employees Trust and others as discussed supra has already declared the status of the transferred employees, more particularly with regard to the applicability of the aforesaid rules, which are now part of the terms and condition of their service.”

15. Thus the rules framed under Civil Servants Act, 1973, insofar as it relates to the disciplinary matters, are also made applicable.

16. In another unreported judgment in CP No.D-3064 of 2010 i.e. Syed Abu Saleheen Ahmed Sayef Hussain & another v. Federation of Pakistan & others, the Division Bench of this Court has taken a contrary view that the procedure for discipline is not a term and condition of employments and therefore as far as disciplinary proceedings are concerned, petitioners are no longer governed by statutory rules therefore writ

would not lie. However this view was taken by the Division Bench in the aforesaid petition while there was no judgment of Hon'ble Supreme Court In the case of Pakistan Telecommunication Employees Trust & others (Supra) and hence the Division Bench of this Court reframed their view by making the provisions of Civil Servants Act, 1973, referred above, and rules framed thereunder as being applicable which include the disciplinary issues as well. The Division Bench further observed in paragraph 11 of their judgment that the view as taken in the case of Pakistan Telecommunication Employees Trust (Supra) was followed by a Five Member Bench in the case of PTCL v. Masood Ahmed Bhatti reported in 2016 SCMR 1362 when the Bench observed that none of the terms and conditions could be varied to their disadvantage as provided by Section referred above in the two Acts.

17. Civil Servants Act and rules framed thereunder cannot be made applicable in piecemeal and left to the desire and choice of the management. If the transferred employees of T & T were to be dealt with in accordance with the terms and conditions, which was guaranteed by two subsequent pieces of legislation, then this chain cannot be broken on any count or head, such as disciplinary issues. If there are charges of serious nature, as highlighted in the charge sheets, then an employee while defending such charges should have been provided with every possible opportunity of defence that he could have as a consequence could be damaging for the employee, petitioners herein. No rule could be read to the disadvantage of the petitioners.

18. Thus in view of these facts and circumstances and considering the gravity of the case and/or allegations leveled against the petitioners, we deem it appropriate to set aside the order of the removal of petitioners from service however we are equally conscious of the fact that the charges raised and leveled against the petitioners be probed

expeditiously without any further delay in the matter. Thus, we are inclined to pass a conditional order that though the impugned removal orders in both petitions are set aside but reinstatement shall be subject to the condition that the respondents may initiate fresh inquiry against petitioners in accordance with law as early as possible and conclude the same preferably within three months. The question of back benefits with consequential relief shall also be subject to the outcome of the inquiry. In case the inquiry is not conducted by the respondent company then the petitioners shall be entitled for reinstatement and back benefits after the expiry of period.

19. Petitions are allowed in the above terms along with pending applications.

Above are reasons of our short order dated 27.09.2019.

Dated: 11.10.2019

Judge

Judge